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April 15, 1999

Hon. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St. S.W.
Washington, D.C. 20554

Dear Ms. Salas:

RE: MM Dockets 98-204 and 96-16
(Broadcast and Cable EEO)

Transmitted herewith are ten copies of the University of Michigan's report "The Compelling Need for Diversity in Higher Education" (January, 1999). Please associate this document with the Reply Comments filed today by MMTC et al. ("EEO Supporters").

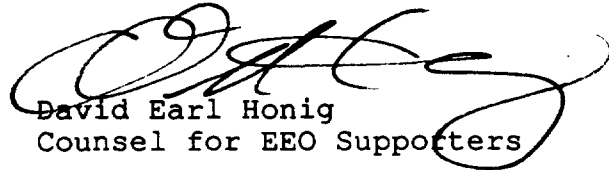
The report contains the testimony of nine distinguished experts who demonstrate that "students who experienced the most racial and ethnic diversity in classroom settings and in informal interactions with peers showed the greatest engagement in active thinking processes, growth in intellectual engagement and motivation, and growth in intellectual and academic skills." Id. at 1 (Introduction). See Declaration of Patricia Gurin, Professor of Psychology and Interim Dean of the College of Literature, Science, and the Arts at the University of Michigan, id. at 99-234 (documenting how students educated in diverse classrooms learn to think in deeper and more complex ways, and are better prepared to become active participants in a pluralistic, democratic society); Declaration of William Bowen, President of the Mellon Foundation and former President of Princeton University, id. at 235-242, and Declaration of Derek Bok, Professor at the John F. Kennedy School of Government and former President of Harvard University, id. at 253-264 (documenting how minorities admitted to the nation's most selective schools have made significant

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achievements, both in school and afterward, and have contributed in important ways to the education of those around them); Declaration of Kent Syverud, Dean of Vanderbilt Law School, id. at 265-268 (showing how a diverse law school class provides a more vibrant and lively opportunity for learning than could otherwise be achieved); Declaration of Robert Webster, a former judge in Oakland County and former President of the Michigan State Bar, id. at 269-272 (describing diversity's importance to the practice of law).

Respectfully submitted,



David Earl Honig
Counsel for EEO Supporters

Enclosures

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THE COMPELLING NEED FOR DIVERSITY IN HIGHER EDUCATION

Gratz, et al. v. Bollinger, et al.
No. 97-75231 (E.D. Mich.)

Grutter, et al. v. Bollinger, et al.
No. 97-75928 (E.D. Mich.)

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FOREWORD

In the controversial 1996 case of *Hopwood v. State of Texas*, the Fifth Circuit defied the Supreme Court's opinion in *Bakke v. Regents of the University of California*, by ruling that institutions of higher education do not have a 'compelling interest' in enrolling a racially diverse student body. Since then, critics of race-conscious admissions policies have sought out similar judicial challenges in courts across the country. In particular, the Center for Individual Rights ("CIR"), which represented the *Hopwood* plaintiffs, has led the charge to prohibit colleges and universities from seeking to enroll racially diverse student bodies. CIR represents three white applicants who have brought two lawsuits against the University of Michigan challenging as unlawful its policy of considering race as one of many factors in the process for admissions to the College of Literature, Science and the Arts, and the Law School.

The University of Michigan has brought together a team of leading scholars to serve as its experts in these cases to establish the basis for the University's argument that there is a compelling need for diversity in higher education. Their research is evidence that the use of race in higher education admissions is not only constitutional, but of vital importance to education and to our society.

January 1999

INTRODUCTION

The last Supreme Court decision addressing the use of race in admissions to institutions of higher education, *Bakke v. Regents of the University of California*, affirmed that the role of diversity in colleges and universities is both essential and compelling. Since *Bakke*, opponents and proponents have wrestled with ideology and theory, but have never had the benefit of a comprehensive theoretical framework that has been tested by reliable empirical data. The University of Michigan has drawn on several of the nation's leading, and most respected, researchers and scholars, to develop such a framework and verify its legitimacy with empirical proof. The evidence submitted by these leaders in the fields of history, sociology, education, economics, psychology, and law, confirms *Bakke's* holding and establishes the continuing imperative for diversity -- including racial and ethnic diversity -- in higher education.

According to the national data collected by these experts, our society is as racially separate today as it was before *Brown v. Board of Education*, before the Civil Rights movement, before the Voting Rights Act, and before the *Bakke* decision. For example, a study of residential segregation shows that the rates of residential segregation in the Detroit area, home to about half of Michigan's residents and the second most segregated metropolitan area in the country, were higher in 1990 than they were in 1960. The statistics all reveal that Americans of different races live separately from one another. They reside in different communities, attend separate elementary and secondary schools, and rarely have sustained, meaningful contact with one another.

The Supreme Court has recognized the critical role that education can play in bridging the racial divide. As early as *Brown v. Board of Education*, the Court noted that public education was "perhaps the most important function of state and local governments," and acknowledged "the

importance of education to our democratic society." Justice Powell made a similar point in *Bakke*, emphasizing that "the nation's future depends upon leaders trained through wide exposure to the ideas and mores of students as diverse as this Nation of many peoples." Because race is a defining characteristic of American life, it shapes our values, beliefs and perspectives. It therefore is no surprise that education that takes place in a racially diverse setting is qualitatively different -- as it turns out, better -- from education that is undertaken in the absence of that diversity. In fact, the University's empirical analyses measuring the educational benefits of diversity establish that "patterns of racial segregation and separation historically rooted in our national life can be broken by diversity experiences in higher education." The data prove that diversity experiences during college have significant effects on the extent to which graduates are living racially and ethnically integrated lives.

Furthermore, the data prove what educators have given testimony to anecdotally: students learn better when the learning occurs in a setting where they are confronted with others who are unlike themselves. As Justice Powell recognized in *Bakke*, an institution of higher education has the academic freedom to make its own judgments about what composition of its student body is necessary to the fulfillment of its mission. Most have made the judgment that a racially and ethnically diverse student body is essential to providing a quality education. The University of Michigan's expert analysis verifies the correctness of that judgment. The results of this study establish the educational benefits of diversity: students who experienced the most racial and ethnic diversity in classroom settings and in informal interactions with peers showed the greatest engagement in active thinking processes, growth in intellectual engagement and motivation, and growth in intellectual and academic skills.

The combined evidence of these nationally recognized experts provides proof that the heart of the *Bakke* decision remains a constitutional and democratic imperative for our society. Historian and sociologist **Thomas Sugrue** of the University of Pennsylvania describes the important role that race continues to play in modern American society. Sugrue, whose recent work on the post-war racial history of the city of Detroit was the 1998 winner of the Bancroft Prize, examines the scope, causes, and consequences of persistent racial separation in the United States, with special attention to Michigan and metropolitan Detroit. Historians **Eric Foner** of Columbia University and **Albert Camarillo** of Stanford University, provide additional historical context. Foner, the President-Elect of the American Historical Association, who is described by the *Washington Post* as "one of the most prolific, creative and influential historians of the past 20 years," describes the history of race relations through the lens of the African-American experience. Camarillo, a leading voice on the history of Hispanic groups in the United States, describes the history of Mexican-Americans, Puerto Rican-Americans, and other Hispanic groups, explaining how these groups have been largely marginalized and separated from mainstream American society.

Patricia Gurin, Professor of Psychology of the University of Michigan, and Interim Dean of the College of Literature, Science, and the Arts, conducted in-depth empirical analyses to measure the educational benefits of diversity. Her studies show that students educated in diverse classrooms learn to think in deeper and more complex ways, and are better prepared to become active participants in a pluralistic, democratic society. Two leading American educators, **William Bowen** (who is

president of the Mellon Foundation, and the former President of Princeton University on whom Justice Powell relied in *Bakke*) and **Derek Bok** (who is a professor at the John F. Kennedy School of Government, and former President of Harvard University and former Dean of the Harvard Law

School) also report the findings first set out in their recent book, *The Shape of the River*. Bowen and Bok find that minorities admitted to the nation's most selective schools have made significant achievements, both in school and afterwards,

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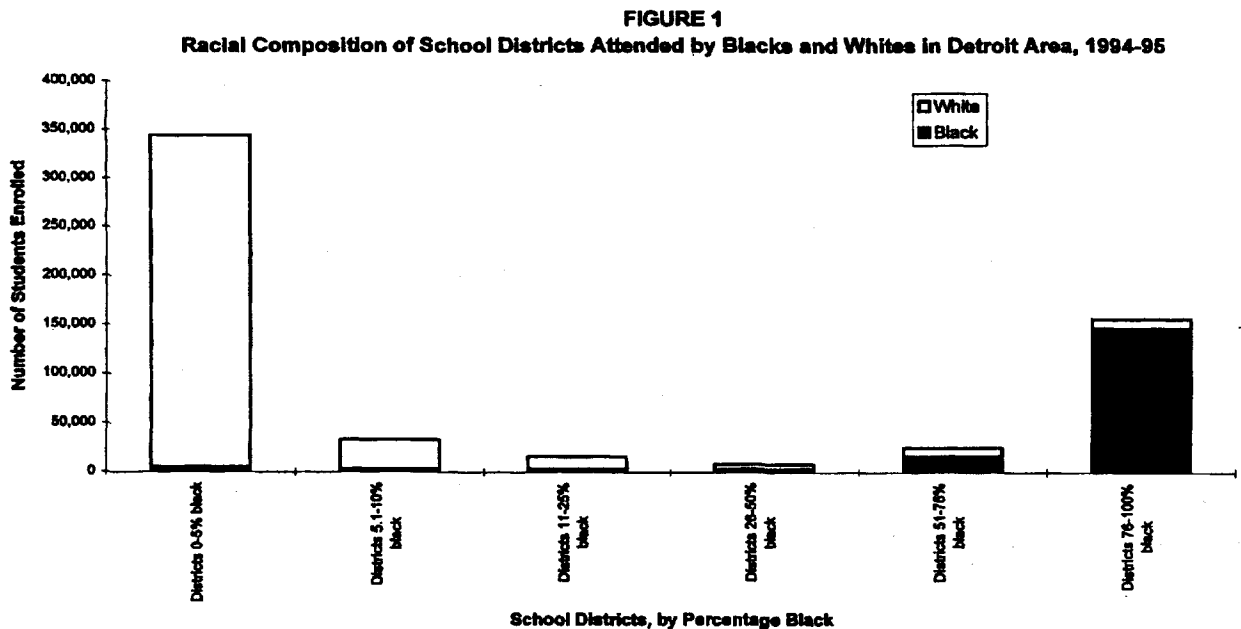
and have contributed in important ways to the education of those around them. **Claude Steele**, Chair of the Department of Psychology at Stanford University, describes the limited usefulness of standardized tests in the admissions process, and explains his research that prevailing stereotypes about minorities' academic capabilities artificially depress minority students' test scores.

In addition, in the context of the challenge to the consideration of race in the law school admissions process, these expert reports show that the need for diversity in legal education is also pronounced. **Kent Syverud**, Dean of Vanderbilt Law School, shows how a diverse law school class provides a more vibrant and lively opportunity for learning than could otherwise be achieved, and **Robert Webster**, a former judge in Oakland County and former president of the Michigan State Bar, describes the importance of diversity to the practice of law. Bok emphasizes that the American legal profession demands that its law schools continue to increase the diversity of the legal profession.

RACE IN AMERICAN LIFE

Although the United States has become an increasingly diverse society, Americans of different racial and ethnic groups lead remarkably separate lives. They live in separate neighborhoods and attend separate schools. They are unlikely to have any sustained or serious contact with each other and rarely share either the significant events in their lives, such as weddings and funerals, or the more casual aspects of their daily routines, like shopping trips or parent-teacher nights. Race affects one's experiences -- and therefore one's perspectives and beliefs. Yet members of different racial groups seldom benefit from exposure to the ideas and perspectives of people from backgrounds other than their own. Indeed, lack of contact with one another fosters misconceptions and mistrust on all sides and affords little or no opportunity either to disrupt the perpetuation of racial stereotypes or to experience the richness of different racial and ethnic communities. The costs of this persistent racial separation therefore are significant for all Americans -- minorities and non-minorities alike. The report of Professor Sugrue details the causes, the extent, and the costs of racial separation in our society.

Despite the end of official school segregation, Americans of different racial and ethnic groups still attend separate elementary and secondary schools. Nearly all of the nation's largest cities have predominantly minority school districts, and most of them are surrounded by overwhelmingly white suburban school districts. Michigan ranks in the top four states in the country in the degree of black/white school segregation; far more students attend racially integrated schools in the southern states than in Michigan. The schools in the metropolitan Detroit area provide a striking example of this separation. In 60 of the 83 districts in the three-county Detroit metropolitan area, the black student population is three percent or less; 82 percent of the African-American students attend schools in only three districts. More than 90 percent of the area's white students attend schools in districts with black student populations under 10 percent. Only two of these districts come at all close to the area's proportion of African-American, Hispanic, and white students. Sugrue graphically demonstrates this pattern:



The consequences of this racial separation in education are enormous. Nearly every American child between the ages of six and sixteen attends school, but the vast majority of them have no significant opportunity for contact with students of different racial and ethnic groups.

In addition to attending separate schools, Americans of different racial and ethnic groups also live in separate communities. Despite landmark court rulings and reported shifts in white attitudes, residential segregation remains a driving force behind racial separation and division, and it remains deeply entrenched throughout the country. This is particularly true in major metropolitan areas of the northeast and midwest. Three of the ten most segregated metropolitan areas in the United States are in Michigan -- Detroit, the Saginaw/Bay City/Midland area, and Flint. Metropolitan Detroit, home to about half of Michigan's residents, offers a stark example of the persistence of black-white residential segregation. Detroit is the second most segregated metropolitan area in the country (following only Gary, Indiana), and rates of residential segregation in Detroit were higher in 1990 than they were in 1960. Many suburban communities on the borders of Detroit have remained almost completely white despite their proximity to adjoining minority-dominated city neighborhoods. Most Michigan residents, like their fellow citizens elsewhere, therefore live in neighborhoods that are not diverse racially or ethnically.

The costs of this persistent and pervasive racial separation are profound for minorities and non-minorities alike -- particularly as the population of the United States becomes increasingly diverse. Whites and minorities do not live near one another and they do not attend school together. Members of different racial and ethnic groups too often are denied the opportunity to benefit from all that our diverse communities have to offer. Such separation also fosters misconceptions and mistrust, and it affords little or no opportunity to correct the racial

stereotypes that are often used as a basis and justification for racial separation. It has consequences for the racial composition of governments and workforces nationwide. And as many employers, particularly in the white collar sector, demand more diverse workforces, it means that few people have the necessary experience to deal with members of different racial groups. It is no surprise that living and learning in such a racialized environment necessarily affects one's experiences and viewpoints. In fact, numerous surveys by public opinion researchers demonstrate

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range of issues, and that those gaps have persisted over time. As Sugrue concludes: "There are unfortunately few places in American society where people of different backgrounds interact, learn from each other, and struggle to understand their differences and discover their commonality."

Foner and Camarillo describe the historical events and circumstances that have given rise to the conditions that Sugrue describes. Foner points out that race has been a crucial line of division in American society since the 17th century. Of the approximately 12.5 million persons who crossed the Atlantic to live in the western hemisphere between 1500 and 1820, some 10 million were African slaves. In the Reconstruction period that immediately followed the Civil War, American society formally embraced, for the first time, notions of civil equality. But race remained an important dividing line, and remains so today. Indeed, Foner shows that America's experience with its African-American minority has shaped the way Americans

view questions of race and issues of similarity and difference.

Camarillo's report outlines the historical patterns and legacies of racial isolation and separation of Hispanics in American society. He explains how the Mexican-American and Spanish-American wars of the 19th century, in conjunction with the westward expansion of the United States and the systematic exploitation of immigrant groups, have led to the marginalization and isolation of Mexican-Americans, Puerto Rican-Americans, and other Hispanic groups.

In light of our history and the persistence of racial separation, it is not surprising that race remains a defining characteristic of American life. Even in a world of racial *equality*, the educational imperative that Justice Powell identified in *Bakke* would exist as long as one's race was so prominent a part of one's experience. This is not to say, of course, that members of any racial group are somehow pre-ordained to hold some particular set of opinions or beliefs. Nor does it entail using race as

a "proxy" for some other value. It is simply to say that whatever one's opinions and beliefs may be, they are affected by one's experience -- including the experience, for example, of being black, or of being white. And in light of the salience of race, it is not surprising that bringing together students from diverse racial groups creates a dynamic educational environment that stimulates cognitive processes and challenges stereotypes. Indeed, racial diversity in higher education has the powerful consequence of breaking down patterns of racial separation in the neighborhoods, employment settings and social groups of graduates from racially diverse colleges and universities. The University of Michigan argues that the importance of race in American history and in American life undergirds the educational imperative described in *Bakke* for achieving a racially diverse student body. At the same time, the University recognizes that by enrolling a racially diverse student body it is creating an environment that fosters the ability of all racial groups to participate fully in American society.

THE BENEFITS OF DIVERSITY: AN EMPIRICAL ANALYSIS

The University of Michigan composes its student body against this background of racial separation. The University draws nearly two-thirds of its students from Michigan, and nearly half come from the metropolitan Detroit area. Many other students come from similarly segregated communities elsewhere in the country. Most of Michigan's incoming students, therefore, have had little or no significant contact with members of different racial and ethnic groups before they come to Ann Arbor. This fact produces an opportunity for the University to capitalize on the educational benefits created by the presence of a diverse student body.

Professor Gurin's report provides conclusive proof that a racially and ethnically diverse university student body has far-ranging and significant benefits for *all* students, non-minorities

and minorities alike. Gurin notes that students, who come to universities at a critical stage of their development, learn better and think in deeper, more complex ways when they are educated with diverse peers. They are also better prepared to participate more fully in our pluralistic democracy when they are educated in such a setting. In fact, diversity experiences in higher education alter the persistence of racial separation in our society. Using national and Michigan student databases, Gurin conducted one of the most extensive empirical analyses ever performed on how diversity in higher education affects students. Her analyses provide striking proof of these benefits of diversity.

Students in late adolescence and early adulthood are at a critical stage of development, and universities are positioned to take advantage of that potential for growth. For many students, the college and graduate school years represent the first

sustained exposure to an environment other than their home communities. This coincides with the time in which young people experiment with new ideas and new roles, and begin to make adult commitments. Research shows that political and social attitudes are shaped during this time, and are heavily influenced by contact with peers. The University of Michigan, like similar institutions of higher education, recognizes this special opportunity and the corresponding obligation to take advantage of it -- in part by bringing together a student body that includes members of different racial and ethnic groups.

Students learn more and think in deeper, more complex ways in a diverse educational environment. Extensive research in social psychology, which Gurin surveys, demonstrates that active engagement in learning cannot be taken for granted. In fact, much of the "thinking" we do is actually mindless, the result of previous learning that has become so routine or scripted that thinking is unnecessary. Effortful and conscious modes of thought, rather than automatic thinking, foster better learning as they help students develop new ideas and ways of processing information, increase alertness and stimulate greater mental activity. Educational institutions plainly want to find ways to engage the deeper, less automatic mode of thinking. The social science literature shows that complex thinking occurs when people encounter a novel situation for which, by definition, they have no script, or when the environment demands more than their current scripts provide. Complex thinking occurs when we encounter people who are unfamiliar to us, when they encourage us to think or act in new ways, when relationships are unpredictable, and when people we encounter hold different kinds of expectations of us.

Racial diversity in a college or university student body provides the characteristics that research has determined are central to triggering the effortful thinking that produces the best learning. At the University of Michigan, for example, the

racial diversity in Michigan's student body is new and unfamiliar for most students, providing multiple

"Students learn more and think in deeper, more complex ways in a diverse educational environment."

and different perspectives and likely to produce contradictory expectations. A diverse student body is especially likely to increase effortful, active thinking when, like Michigan, institutions of higher education

capitalize on these conditions in the classroom and provide a climate in which students from diverse backgrounds frequently interact with each other. Gurin's empirical analyses show that interaction on campus with peers from diverse racial backgrounds, both in the classroom and informally, is positively associated with a host of "learning outcomes." Students who experienced the most racial and ethnic diversity in classroom settings and in informal interactions with peers showed the greatest engagement in active thinking processes, growth in intellectual engagement and motivation, and growth in intellectual and academic skills.

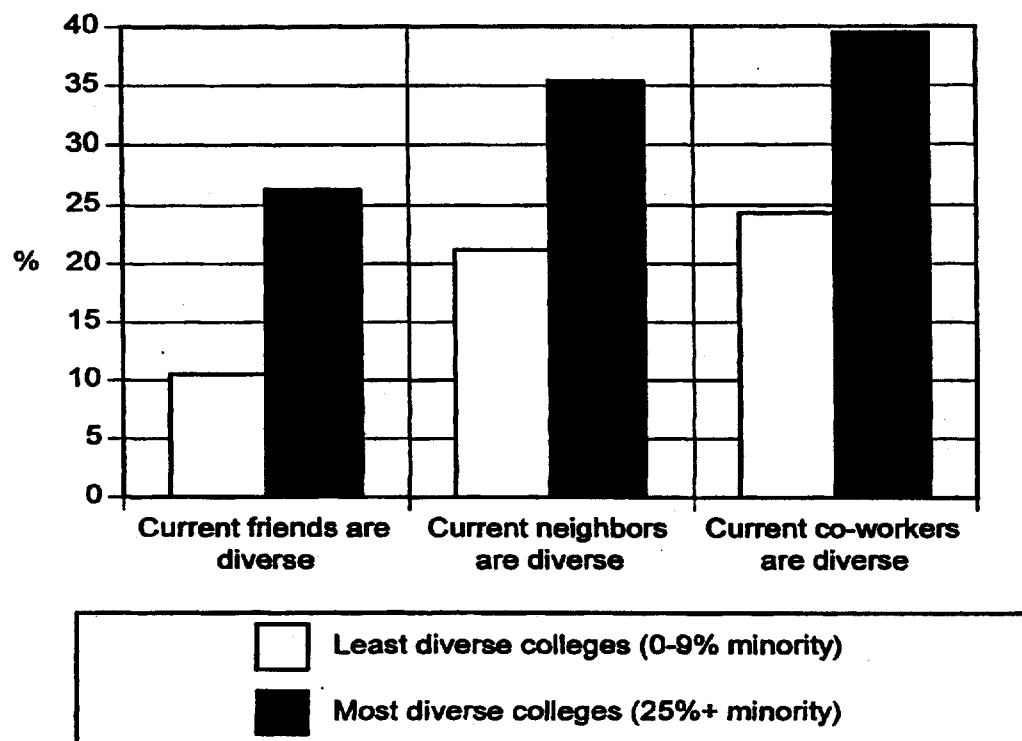
Gurin also proves the benefits of a racially diverse student body in a second major area. Education plays a foundational role in a democracy by equipping students for meaningful participation, and students educated in diverse settings are more motivated and better able to participate in our increasingly heterogeneous, complex and multicultural democracy: They are better able to appreciate the ideas of others -- called "perspective taking" -- when they interact with diverse peers on an equal footing. They are more equipped to understand and consider multiple perspectives, deal with the conflicts that different perspectives sometimes create, and appreciate the common values and integrative forces that harness differences in pursuit of the common good. Encountering students from different racial and ethnic groups on campus enables students to get to know one another and to appreciate both similarities and differences. The results of Gurin's empirical analyses confirm the central role of higher education

in developing students into active citizens and capable participants in a pluralistic democracy. Students who experienced diversity in classroom settings and in informal interactions showed the most engagement during college in various forms of citizenship, and the most engagement with people from different races and cultures. They were also the most likely to acknowledge that group differences are compatible with the interests of the broader community. These effects continued after the students left the university setting.

Significantly, Gurin's empirical work also shows that, as she says, "patterns of racial segregation and separation historically rooted in our national life can be broken by diversity experiences in higher education." Experiences with diversity

during college had remarkable consequences for the extent to which graduates in the national study were living racially and ethnically integrated lives in the post-college world. As shown in Figure 2, students with the most diversity experiences during college had the most diverse friends, neighbors, and work associates five years after leaving college. One consequence, then, of the University of Michigan's policy of enrolling a diverse student body, is that it may contribute to overcoming the legacy of racial separation that Sugrue describes.

FIGURE 2:
Structural diversity effects on interracial contact patterns after college among white students raised in predominantly white neighborhoods (CIRP study)



Notes: Diversity of friends, neighbors, and co-workers defined as half or more being non-white. "Current" responses refer to 1994, the time of the second follow-up survey.

THE CONSEQUENCES OF RACE-SENSITIVE ADMISSIONS POLICIES

There is no question that a school's success, and its character, are directly tied to its student body. Each college and university must select a group of students that will -- as a whole -- reflect the values of the institution, make the greatest contributions to the educational process, and apply its teaching to serve the interests of the larger society. The institution's task, then, as Bowen says "is to assemble a total class of students, all of whom will possess the basic qualifications, but who will also represent, in their totality, an interesting and diverse amalgam of individuals who will contribute through their diversity to the quality and vitality of the overall educational environment." The lawsuits against the University of Michigan challenge the University's ability to compose a student body that enables it to achieve its educational mission and fulfill its obligations to the larger society.

Until recently, the debate surrounding race-conscious admissions policies was fueled primarily by guesswork and anecdotal evidence. Bowen and Bok's study, *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions*, now provides the empirical evidence necessary for an informed discussion of this critical issue, as does the work of Gurin, described above.

Contrary to current misconceptions, Bowen and Bok find that the use of race in the admissions processes of selective institutions of higher education over the last twenty years has been very successful. "[T]he data overwhelmingly demonstrate that minority students admitted to selective schools had strong academic credentials, graduated in large numbers and did very well after leaving college. By every measure of success (graduation, attainment of professional degrees, employment, earnings, civic participation, and overall satisfaction), the more selective the school, the more blacks achieved (holding constant their initial test scores and grades)." This evidence dispels the notion that the consideration of race in

admission to selective institutions has done a disservice to minority students by placing them in schools in which they are unable to compete and that, as critics have suggested, these students would have been better off attending less selective institutions. While it is true that there remains a gap in the graduation rates of minority and majority students, such a gap is not explained by minority students' inability to complete the curriculum at selective schools. In fact, the graduation rates of black students are substantially *higher* at selective institutions -- 75 percent of black students graduated within six years from the school they first entered, as compared with the 40 percent of blacks and 59 percent of whites who graduated from the 305 schools across the country tracked by the National Collegiate Athletic Association.

There is also no evidence -- again, contrary to prevalent misconceptions -- that the consideration of race in the admissions process stigmatizes minority students. Black graduates of the most selective schools are the most satisfied with their college experience. Over 90 percent of both blacks and whites reported that they were satisfied or very satisfied with their college experience. Moreover, almost 80 percent of white students favored either retaining the current emphasis on a diverse student body or emphasizing it more. Even white students who had been rejected by their first-choice school, who, presumably, might be prone to oppose diversity efforts, supported an emphasis on diversity just as strongly as students who were admitted to their first-choice schools.

The findings of Bowen and Bok, as well as those of Steele, strike at the heart of the much misunderstood concept of "merit" in admissions to institutions of higher education. In our national discourse on this issue, "merit" has come to be defined by test scores and grades. As stated by Bowen, "Many people suppose that all students with especially high grades and test scores 'deserve'

to be admitted and that it is unfair to reject them in favor of minority applicants with lower grades and test scores. But selective colleges do not automatically offer admission as a reward for past performance to anyone. Nor should they." Colleges and universities select students who are not only academically qualified, but who can make a contribution to the school and to society, which is generally manifested by nonquantifiable traits. While grades and test scores may be relevant, they are by no means all that matter.

More importantly, an inordinate reliance on test scores in higher education admissions would be misguided and would lead to the rejection of qualified students -- particularly minority students -- for several reasons discussed by Steele. Contrary to popular belief, these tests are not designed to test mental capacity nor mastery of a specified curriculum. Standardized tests are instead designed to test developed skills, which are affected by a host of experiential factors. Moreover, the predictiveness of these tests is quite limited. For example, the SAT measures only about 18 percent of the factors that determine freshman grades. Even that small predictive value decreases over time. SAT scores are thus less predictive of sophomore grades, even less predictive of graduation rates, and even less predictive of professional success. Consequently, large score differences -- even as much as 300 points on the SAT -- actually represent a very small difference in the skills that are crucial to academic performance as measured by grades.

Steele effectively illustrates the limitation on the usefulness of standardized tests with an analogy. Suppose that one were to select a basketball team based on a player's ability for free throw shooting. Each player would be given ten opportunities to make free throws. The obvious limitation is selecting basketball players based on the single criterion of free throw shooting, which is

only a small portion of the skills that go into actual basketball playing. The same is true of standardized tests, which measure only a fraction of the skills that comprise a good student. A less obvious, but perhaps more complex problem in selecting basketball players based on free throw shooting, is in interpreting a player's scores. Those players who were unable to make any free throws would not be selected, while those who made 10 of 10 would be selected for the team. The difficulty is in deciding which players to

select among those who made between four and seven throws. "Middling scores like these could be influenced by many things other than underlying potential for free throw shooting or basketball playing, such as the amount of practice involved, access to effective coaching, whether the player was having a good or a bad day. Roughly the same is true . . . for interpreting standardized test scores: Extreme scores (though less reliable) might permit some confidence in a student's likelihood of success, but middling scores are more difficult to interpret as an indication of underlying promise." Such scores may be influenced by a myriad of factors. Although test scores have some limited purpose in informing admissions decisions, they fail to capture more than a small portion of the factors that constitute academic merit.

Standardized test scores of minority students must be viewed with special caution as minority students tend to underperform on such tests due to a psychological phenomenon known as "stereotype threat." When taking tests that purport to measure ability, the performance of talented minority students may be undermined by their fear that they will conform to negative racial stereotypes. Stereotype threat persists even among middle-class blacks, indicating that socioeconomic status does not explain their underperformance.

"[T]he data overwhelmingly demonstrate that minority students admitted to selective schools had strong academic credentials, graduated in large numbers and did very well after leaving college."

Steele has confirmed the existence of stereotype threat by randomly assigning two groups of black and white students who were statistically equated on ability level, and giving each group a difficult 30-minute verbal test. The first group was told that the test measured ability; in that instance, black students performed much worse than white students. A second group of black and white students were given the same test, but told that it was a problem-solving task that had nothing to do with ability. In that instance, the performance of black students matched that of the white students. In the latter situation, the negative stereotype of blacks' intellectual or academic abilities was irrelevant to the black students because the task did not measure ability. In other words, the "stereotype spotlight" was turned off. These same results have been obtained with other groups whose abilities in certain areas are negatively stereotyped in society: women taking difficult math tests; white male athletes being given a test of natural athletic ability; and Hispanics taking a difficult English test. Interestingly, the detrimental effects of stereotype threat on test performance is greatest for those students who are most invested in doing well on the test. That is, stereotype threat affects the "cream of the crop" -- those students who are most skilled, motivated, and confident. It is especially for them

that standardized test scores are failing to reflect their true talents.

Finally, one other cautionary note about standardized test scores bears discussion. The difference in average test scores between minority and majority students admitted to the University of Michigan and other selective colleges and universities have been misinterpreted as a sign that there is a lower admissions standard for minorities. In fact, the difference on most college campuses can be explained by the fact that minority students -- especially blacks -- are extremely underrepresented at the higher ranges of test scores and overrepresented at the ranges closer to an admissions threshold. This means that even though the averages of both majority and minority test scores exceed the threshold for admitting any applicant, the minority average will be lower than the average majority score. For instance, if a school were to use an SAT score of 1100 as a cut-off, and admitted all applicants with scores over 1100, the white students would have a higher average SAT score than black students, although all scores would be over 1100. This is so because there are simply more white students who score at the upper end of the SAT distribution. Thus, differences in average scores prove nothing about admissions standards.

RACIAL DIVERSITY IN LEGAL EDUCATION

Bowen and Bok's landmark study of the effectiveness of race-conscious admissions programs, as well as Gurin's research, were based on data relating to undergraduate education. Their work nevertheless supports the premise that achieving diversity is essential in legal education. As the Supreme Court observed nearly 50 years ago in *Sweatt v. Painter*, the law school is a "proving ground for legal learning and practice," and it "cannot be effective in isolation from the individuals and institutions with which the law interacts. Few students, and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of

ideas and exchange of views with which the law is concerned."

The interest in achieving a diverse student body is, without doubt, somewhat different in legal education than it is in undergraduate education. Because law schools provide a form of professional training, rather than a general liberal education, the educational interest in enrolling, for example, a concert pianist or an All-American linebacker, may be less pronounced than in undergraduate education. But because of the way in which the law affects nearly all social relations, such an interest is still

"Because of the pervasive importance of race in American life, the presence of meaningful racial diversity is essential to the effective teaching, and learning, of American law."

present in legal education. And the interest in achieving a racially diverse student body, given the importance of race in American life and American law, is pronounced.

The conditions that Gurin identifies in the context of undergraduate education that render college students particularly amenable to the benefits of diversity also generally exist in legal education. The experience of most students in their first year of law school, particularly in institutions that rely on the Socratic method, requires a new and unfamiliar way of thinking, that is discrepant from one's prior experiences, that provides a source of multiple and different perspectives, and that is likely to produce contradictory expectations. As Syverud (who is now the editor of the Journal of Legal Education, and who began his career as a law teacher "skeptical" that considering race in admissions had a positive effect on the educational experience of law students") explains, "[i]n my own civil procedure class, I call upon each student several times a semester, usually questioning each student for fifteen to twenty minutes. The purposes

of this method are manifold; they include the desire to engage the student closely and carefully with a legal text and to make the classroom dynamic, lively, and interesting. At least as important, the method consciously seeks to make the students think, to learn from each other, and to learn to be able to see any set of facts from different points of view." As Gurin's report explains, these are exactly the conditions -- when students are facing new and different challenges and their pre-existing ways of thinking are being called into question -- in which a racially diverse educational setting is most likely to lead to active and engaged thinking.

Indeed, one of the most important objectives of American legal education is to cultivate in law students the ability to understand an issue from many perspectives at the same time. For reasons that are described in the reports submitted by Sugrue, Foner, and Camarillo, Americans of different races have experiences that affect their views of many subjects that figure prominently in legal education. For some of these issues -- such as civil rights law, criminal justice, and the First Amendment -- the relevance of race may be obvious; for other issues, such as civil procedure and property law, it may be more subtle. And for all of these issues, students may be surprised by similarities or differences in views that they had not anticipated. Because of the pervasive importance of race in American life, the presence of meaningful racial diversity is essential to the effective teaching, and learning, of American law.

THE NEED FOR RACE-SENSITIVE ADMISSIONS POLICIES: THE ABSENCE OF ALTERNATIVE MEANS TO OBTAIN RACIAL DIVERSITY

Highly selective colleges and universities, such as the University of Michigan, could not achieve racial diversity if they did not consider race as a factor in admissions. The data show that each of the proposed alternative methods of achieving diversity simply cannot work. There are two alternatives typically offered by those who oppose race-sensitive admissions policies: (1) the use of family income as a criterion instead of race; and

(2) the admission of all students, regardless of race, who graduate above a certain class rank. Neither system would achieve racial and ethnic diversity and both contain flaws that would undermine the educational goals of selective colleges and universities.

The use of a class or income-based system would fail to attain racial diversity because there are too few blacks and Hispanics from poor families

who have strong enough academic records to qualify for admission to selective institutions. Children from poor black and Hispanic families make up less than half of all poor children and are much less likely than poor whites to excel in school. To reach these students, schools would need to lower their academic thresholds to a point that would jeopardize their academic standing. Equally ineffective in achieving diversity would be a system that admits the top ten percent of high school graduates. As an initial matter it is appropriate to question the soundness of adopting a policy that would be successful only as long as the high schools from which student apply remain racially segregated. Furthermore, at the University of Michigan, such a

policy would result in a dramatic drop in the presence of underrepresented racial minorities in the student body. Even if such a policy produced a racially diverse student body, it would result in the admission of students from weaker schools who may be unprepared for college, and in the rejection of better-prepared students from stronger schools. Because high schools differ so substantially in the academic abilities of their students and the level of difficulty of their curricula, all applicants who graduate above a certain class rank cannot be treated equally. These efforts, however well-intentioned, are ineffective in achieving any meaningful racial and ethnic diversity in selective institutions.

DIVERSITY IN HIGHER EDUCATION: THE CALL FROM BUSINESS AND THE PROFESSIONS

Leaders in the fields of law, business, and other professions demand that institutions of higher education be diverse. These professions recognize that not only do they need colleges and professional schools to turn out diverse classes of students to bring diversity to the professions, but also that students educated and trained in diverse settings will be better equipped to function and thrive in an increasingly diverse world.

In the context of the legal profession, for example, one of the most important skills for a lawyer to develop is the ability to work well with those of diverse backgrounds. Good advocacy requires understanding both the client and the adversary. Syverud, however, notes that many students come to law school with strong advocacy skills and poor listening skills. Students often assign to people of different races viewpoints that are not informed by experience or direct dialog. In Gurin's terms, they think in an "automatic" mode. Syverud notes, however, that "[t]hey are very often wrong. They don't know what they don't know, and it is my job to show them what they have to learn, every time, from every individual client or adversary."

Law schools have a responsibility to train students to become negotiators, problem solvers, managers, counselors, investigators and mediators. Syverud observes that "skills instruction is enhanced dramatically for all students by the interaction in class of future lawyers of all races, and by the different and at times unpredicted viewpoints different people may bring to the discussion." This phenomenon is confirmed by Webster's experience. Webster, who is white, is a former president of the Michigan state bar, and a former judge on the Oakland County Circuit Court. He grew up in a predominantly white neighborhood and attended predominantly white schools. As a 1955 University of Michigan Law School graduate, he did not have any meaningful interaction in law school with members of other racial groups. Nor were his experiences more varied at Hill, Lewis, Adams Goodrich & Tait, a leading Detroit law firm. It was not until he was named to the bench that he found himself in contact with those of other racial and ethnic groups. Those experiences "exposed and destroyed racial stereotypes I did not even know I harbored . . . But I did not only learn about differences; I also learned about similarities, about how much of the human condition transcends racial boundaries. Now, more than ever, our profession needs lawyers to be bringing these kinds of skills

and insights to the bench -- not to be acquiring them there."

Perhaps for this reason, the legal profession itself demands that American law schools graduate diverse classes of young lawyers. In 1984, an American Bar Association report noted that the legal profession has a duty that "arises out of the unique offices that lawyers hold as ministers of the law and guardians of its conscience, and as teachers and advocates of fairness and equality." A 1987 report of the Michigan Supreme Court, reached the same conclusion, noting that "the presence of minorities in the profession increases public perception of fairness." And a 1998 report reaffirmed that position, stating that by "reflect[ing] the diversity of the constituency it serves," the justice system avoids "[t]he appearance of bias, as well as the reality of bias." Perhaps for these reasons, the American Bar Association and the Association of American Law Schools, both of which serve as accrediting bodies, require as a condition of accreditation that schools seek to enroll

diverse classes of students. If American law schools were precluded from considering race as a factor in admissions, the public perception that the American legal system can be trusted to provide equal justice under law would be imperiled.

"The significance of diversity in all walks of life will only intensify in the future. The seeds for such a future must continue to be sown today in our nation's colleges and universities."

B u s i n e s s , government, and other professions make similar demands on higher education. According to current estimates, by 2030, 40 percent of all Americans will

be members of minority groups. In our increasingly multi-racial society, corporations are making significant strides in recruiting and developing a workforce that values diversity and that can effectively conduct business worldwide. As Bowen attests, the business world has recognized the advantages of hiring graduates of universities with diverse populations -- whether minorities or non-minorities themselves -- who bring to the table an ability to work productively in a diverse environment. The significance of diversity in all walks of life will only intensify in the future. The seeds for such a future must continue to be sown today in our nation's colleges and universities.

EXPERT REPORT OF THOMAS J. SUGRUE

Gratz, et al. v. Bollinger, et al., No. 97-75321 (E.D. Mich.)

Grutter, et al. v. Bollinger, et al., No. 97-75928 (E.D. Mich.)

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